

STEPHEN W. FOX

IBLA 79-552

Decided September 30, 1980

Appeal from decision of the New Mexico State Office, Bureau of Land Management, declaring mining claim null and void. NM MC 58082.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Withdrawals--Mining Claims: Withdrawn Land--Withdrawals and Reservations: Effect of

A mining claim located on land temporarily segregated from appropriation under the mining laws pursuant to 43 U.S.C. § 1714(b) (1976) is null and void ab initio.

2. Federal Land Policy and Management Act of 1976: Withdrawals--Mining Claims: Withdrawn Land--Secretary of the Interior--Withdrawals and Reservations: Effect of

Under 43 U.S.C. § 1714(b) (1976) a publication in the Federal Register of notification of an application for withdrawal, which publication temporarily segregates land from the operation of the mining laws, does not withdraw the land, and therefore the notice need not be signed by the Secretary or an individual in the Office of the Secretary who has been appointed by the President, by and with the advice and consent of the Senate.

APPEARANCES: Stephen W. Fox, pro se.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Stephen W. Fox appeals from a July 27, 1979, decision of the New Mexico State Office, Bureau of Land Management (BLM) declaring appellant's mining claim null and void ab initio. Appellant's claim was located on July 10, 1979, in the SE 1/4 sec. 20, T. 22 S., R. 31 E., New Mexico principal meridian.

The lands claimed by appellant were temporarily segregated from the operation of the mining laws by a notice published in the Federal Register entitled "Notice of Proposed Withdrawal and Reservation of Lands." 43 FR 54063 (Nov. 15, 1978). The temporary segregation is the result of an application (NM 35375) filed by the U.S. Department of Energy on October 13, 1978, for the withdrawal of approximately 17,200 acres. The Department of Energy desires the lands for a waste isolation pilot plant.

In his statement of reasons, appellant presents the following arguments: (1) The Department of Energy application for withdrawal is a renewal of an application filed in 1976, which is not provided for by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1700-1782 (1976); (2) the provisions of 43 U.S.C. § 1714 (1976), pertaining to notification of Congress and public hearings, have not been complied with; (3) pursuant to 43 U.S.C. § 1714(b)(1) (1976), the Chief Branch of Lands and Minerals Operations, is not empowered to sign withdrawal notices, therefore, the notification in the Federal Register is invalid.

[1] It is well established that a mining claim located on land which is not subject to mineral entry at the time of location is null and void from its inception. Glen H. Brooks, 48 IBLA 51 (1980). The claim was located on July 29, 1979, well after the segregation. Therefore, if the segregation is valid the mining claim was properly declared void ab initio.

[2] The temporary segregation was authorized by section 204(b) of FLPMA, 43 U.S.C. § 1714(b)(1) (1976), which provides:

Within thirty days of receipt of an application for withdrawal, and whenever he proposes a withdrawal on his own motion, the Secretary shall publish a notice in the Federal Register stating that the application has been submitted for filing or the proposal has been made and the extent to which the land is to be segregated while the application is being considered by the Secretary. Upon publication of such notice the land shall be segregated from the operation of the public land laws to the extent specified in the notice. The segregative effect of the application shall terminate

upon (a) rejection of the application by the Secretary (b) withdrawal of lands by the Secretary, or (c) the expiration of two years from the date of notice.

Appellant's statement that application No. NM 35375, filed October 13, 1978, is a renewal of an application filed in 1976, is not indicated by the record before the Board. It would be proper, however, for the Secretary to choose to follow the withdrawal procedure in section 1714, regardless of whether a previous application had been filed.

As to appellant's other arguments, a review of the legislative history of FLPMA has not disclosed any guide as to interpretation of this section of the Act.

Section 1714(b)(1) provides a two-step procedure concerning withdrawals. The first step is the publication of notice in the Federal Register that an application for a withdrawal has been filed and setting forth the extent to which the land is to be segregated while the application is being considered by the Secretary. The statute provides for the termination of the segregative effect of the application upon (a) rejection of the application by the Secretary, (b) withdrawal of lands by the Secretary, or (c) the expiration of 2 years from the date of the notice.

Section 1714(c) is not applicable until after the Secretary, or one of his delegates has followed the procedure required under section 1714(b). It is not until withdrawal, as distinguished from segregation while an application or Secretarial proposal is being considered, that the congressional approval procedures required by section 204(c) are triggered. Therefore, appellant's objections that the procedures required by section 204(c) have not been met are premature, since the land in question has not been withdrawn by the Secretary.

The third argument of appellant is that the segregation of the lands is invalid because it is the result of an improperly issued notice. Appellant contends that, pursuant to 43 U.S.C. § 1714(a) (1976), the notice published in the Federal Register was required to be signed by the Secretary or one of the individuals authorized by the statute.

Section 1714(a) provides:

On and after the effective date of this Act the Secretary is authorized to make, modify, extend, or revoke withdrawals but only in accordance with the provisions and limitations of this section. The Secretary may delegate this withdrawal authority only to individuals in the Office of the Secretary who have been appointed by the President, by and with the advice and consent of the Senate.

Again we must distinguish between a withdrawal and a temporary segregation. Section 1714(a) limits the Secretary's delegation of authority regarding withdrawals. In contrast, the published notice served only to temporarily segregate the land from operation of the public land laws under section 1714(b). The temporary segregation is limited to a maximum of 2 years, while a withdrawal may be for a period of 20 years. The temporary nature of the segregation leads to the conclusion that a notice of the application for withdrawal need not be signed by the Secretary or one of the limited delegates under section 1714(a).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

---

Joseph W. Goss  
Administrative Judge

We concur:

---

Anne Poindexter Lewis  
Administrative Judge

---

Frederick Fishman  
Administrative Judge

